

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

LOGAN WESLEY III

Plaintiff,

v.

SHERIFF JEFF NEAL, ET AL.

Defendants.

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Case No. 5:22-cv-00078-JRG-JBB

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Logan Wesley III, a former inmate of the Bowie County Correctional Center proceeding *pro se* but not *informa pauperis*, filed this lawsuit complaining of alleged violations of his constitutional rights. The case was referred to United States Magistrate Judge J. Boone Baxter in accordance with 28 U.S.C. § 636.

On March 4, 2024, the Court entered an order dismissing all of the claims except for a claim that after Plaintiff was assaulted by another inmate, Sgt. Malone failed to ensure that he received a liquid diet which he had been ordered. Docket No. 35 at 8. In allowing this claim to proceed, the Court ordered Plaintiff to amend his complaint within thirty (30) days to set out specific facts concerning the alleged denial of food. *Id.*

Rather than amend his complaint as ordered by the Court, Plaintiff filed a notice of appeal on April 9, 2024. On July 1, 2024, the Fifth Circuit issued its mandate dismissing the appeal for want of jurisdiction. Docket No. 39.

On August 20, 2024, the Magistrate Judge, noting Plaintiff had not filed an amended complaint as ordered, entered a Report recommending that Plaintiff's remaining claim against Sgt. Malone be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute or to obey an order of the Court. Docket No. 40. The Magistrate Judge further recommended that the statute of limitations be suspended for a period of sixty (60) days from the

date of entry of final judgment in the case and that final entry be entered and this case closed because these are the last remaining claims in the case. *Id.* at 3.

Plaintiff received a copy of this Report on August 29, 2024, but has filed no objections. Docket No. 42. Accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. See *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). Accordingly, it is

ORDERED that the Report of the Magistrate Judge (Docket No. 40) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the remaining claim against Sgt. Malone for the alleged denial of food is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. The statute of limitations on this claim is suspended for a period of sixty (60) days from the date of entry of final judgment in the case. Because this is the last remaining claim in the case, the Court will enter final judgment accordingly. It is further

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So Ordered this

Oct 8, 2024



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE